HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO: 19201 of 2007

Dated: 23-10-2007

Between:

Smt. Bandi Sunitha and another

..... PETITIC

AND

The District Collector,
Khammam and 2 others.

.....RESPONI

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 19201 of 2007

O R D E R:

This writ petition is field for a writ of Mandamus to set aside the notice dated 15-10-2006 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), declaration dated
23-09-2006 under Section 6 of the Act, notice dated
27-11-2006 issued under Sections 9(3) &(10) of the Act and the award dated nil of August, 2007 as illegal, arbitrary and violative of principles of natural justice.

The first petitioner owns an extent of Ac.0.09 ¾ guntas and second petitioner owns Ac. 0.01 ¾ guntas in Sy.No.111/U/A of Sathupalli village, Khammam District. The said lands are sought to be acquired under the notification dated 15-10-2006 issued under Section 4(1) of the Act. The main grievance of the petitioners is that the respondents have dispensed with enquiry under Section 5-A of the Act. They stated that had an enquiry been held, they would have impressed upon the respondents that there was no need for excavation of an alternative canal through their land and that denial of such an opportunity resulted in violation of their legal rights.

The Revenue Divisional Officer-Land Acquisition Officer, Khammam District filed a counter affidavit in which it is stated that the lands of the petitioner were acquired for excavation of alternative canal by name NTR canal. It is stated that in view of the urgency involved, enquiry under Section 5-A was dispensed with by invoking the urgency clause under Section 17(4) of the Act. It is further stated that award notices were sent to the petitioners requesting them to attend the enquiry on 16-12-2006 and that petitioner No.2 has attended the award enquiry on the said date. It is further stated that national survey, has found that coal mines are passing under the existing NTR canal and that Singareni Collieries have already started open coast mines due to which alternative canal has been proposed for excavation. Therefore, the Requisitioning Department i.e. Executive Engineer, I&B Division Khammam selected the lands in question and accordingly submitted requisition to the Land Acquisition Officer, in pursuance of which the Irrigation Department after verifying the feasibility of the project, selected the lands which were found suitable for excavating the canal. It is further stated that an

award was passed on 09-08-2007.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Land Acquisition.

Learned counsel for the petitioner submitted that the very proposal of excavating an alternative canal is misconceived in the face of the existing canal. He also submitted that the petitioners are denied the reasonable opportunity of putting forth their cases by dispensing with their enquiry under Section 5-A of the Act.

It is not in dispute that notification under Section 4(1) of the Act was published on 15-10-2006 and the declaration under Section 6 of the Act was made on 23-09-2006. Award was passed on 09-08-2007. The petitioners at no point of time raised any objection to the acquisition almost till the point of time of passing of the award. Had the petitioners been serious in raising the objection regarding dispensing with of the enquiry under Section 5-A of the Act, there was no reason for them not to have approached this Court to stop further proceedings in pursuance of the notification issued under Section 4(1) of the Act. The petitioners allowed the Acquisition Proceedings taking place under their nose without raising any demur. I am, therefore, of the opinion that the petitioners approached this Court at a far too belated stage by complaining about the dispensing with of the enquiry under Section 5-A of the Act. The petitioners who have slept over their rights cannot be allowed to raise their grievance at this belated stage.

With regard to the objection based on the necessity of laying a canal, I am afraid it is not for the petitioners to plead about the necessity or otherwise of a new canal. The decision to excavate the canal falls totally in the realm of the administration, and it is for the persons at the helm of the administration to decide whether any necessity exists or not. In my considered view, this aspect is not justiceable. It is not the case of the petitioners that the project is conceived with a mala fide intention to deny the petitioners of their properties.

For the aforementioned reasons, the writ petition is dismissed. No costs.

C.V.NAGARJUNA REDDY,J

Date: 23-10-2007
KLP